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COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

TAMMY P., Appellant, v. ARIZONA DEPARTMENT OF ECONOMIC SECURITY, TIFFANIE G., ROBERT G., MATTHEW G., and HAILEIGH P., Appellees.	2 CA-JV 2007-0103 DEPARTMENT B MEMORANDUM DECISION Not for Publication Rule 28, Rules of Civil Appellate Procedure

APPEAL FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. 12530200

Honorable Patricia G. Escher, Judge

AFFIRMED

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E S P I N O S A, Judge.

¶1 In this appeal, appellant Tammy P. challenges the juvenile court's order terminating her parental rights to Tiffanie G., born in July 1997; Robert G., born in August 2000; Matthew G., born in February 2003; and Haileigh P., born in April 2006, on the ground the children had remained in a placement out of the home pursuant to court order for a period of fifteen months or longer. *See* A.R.S. § 8-533(B)(8)(b). Tammy contends there was insufficient evidence to support the court's order. We affirm for the reasons stated below.

¶2 In a proceeding to terminate parental rights, any ground alleged in the motion or petition must be established by clear and convincing evidence. *See* Ariz. R. P. Juv. Ct. 66(C); *Michael J. v. Ariz. Dep't of Econ. Sec.*, 196 Ariz. 246, ¶ 12, 995 P.2d 682, 685 (2000). However, that termination of a parent's rights is in the child's best interests need only be established by a preponderance of the evidence. *See Kent K. v. Bobby M.*, 210 Ariz. 279, ¶ 41, 110 P.3d 1013, 1022 (2005). This court will not disturb a juvenile court's order terminating parental rights unless there is no reasonable evidence supporting the factual findings upon which the court's order is based; that is, we will affirm the juvenile court unless the order is clearly erroneous. *See Jennifer B. v. Ariz. Dep't of Econ. Sec.*, 189 Ariz. 553, 555, 944 P.2d 68, 70 (App. 1997).

¶3 In May 2004, seven of Tammy's children, including Tiffanie, Robert, and Matthew, were adjudicated dependent as to her because of neglect and abuse involving domestic violence. The family was provided a variety of services, and in January 2005 the

juvenile court dismissed the dependency proceeding. Shortly thereafter, however, Sara—another child of Tammy's but not a party to this appeal—told Tammy that Todd G., Sara's biological father, had sexually abused her before he was incarcerated in 2004. Tammy did not report the allegations and did not obtain help for Sara.

¶4 In July 2005, Tammy began a relationship with twenty-one-year-old Jerry P., who is younger than Tammy by more than twenty years. Years earlier, Jerry had been adjudicated delinquent for having molested his nephew and had failed to successfully complete sex offender treatment. Tammy and Jerry were married in September 2005. In November 2005, Sara reported to a school staff member that her brothers Shane and Codie, ages fourteen and twelve, had been having sex with her for more than a year, that she had told her mother but that her mother did not listen, and that her father had molested her as well. The Arizona Department of Economic Security (ADES) then received reports that eight-year-old Tiffanie was being molested by Shane, that Codie had tried to have sex with her, and that she was afraid to go home.

¶5 The girls were immediately removed from the home. ADES filed a dependency petition at the end of November as to all of the children. In February 2006, five-year-old Robert reported to his teacher that he had been molested by his brother. Robert and then-three-year-old Matthew were removed from the home. The children were adjudicated dependent as to their mother in March 2006 after a contested dependency hearing. On April 15, 2006, Tammy gave birth to Haileigh, the biological child of Jerry.

ADES removed Haileigh from the home, and she was adjudicated dependent in July 2006 after Tammy admitted the allegations in an amended petition. Among those allegations were a summary of the juvenile court's previous findings in the dependency proceeding as to the other children. In addition, the amended petition alleged Haileigh had been born prematurely and had serious medical issues, there existed an outstanding warrant for Jerry's arrest because of his failure to register as a sex offender and his assault of a police officer, and the court had ordered Jerry to leave the home because of the risk he posed to the children as a sex offender.

¶6 The case plan goal initially was reunification, but the juvenile court changed it to severance and adoption after an extensive permanency hearing. *See* A.R.S. § 8-562. ADES filed motions to terminate Tammy's parental rights to Tiffanie, Robert, Matthew, and Haileigh pursuant to § 8-533(B)(8)(b). After a severance hearing, the court granted the motions in November 2007, terminating Tammy's parental rights to these children.

¶7 On appeal, Tammy challenges the sufficiency of the evidence to support the following elements of § 8-533(B)(8)(b): that ADES, "the agency responsible for the care of the child[ren,] has made a diligent effort to provide appropriate reunification services" and that, despite such efforts,

> [t]he child[ren] ha[ve] been in an out-of-home placement for a cumulative total period of fifteen months or longer pursuant to court order . . . , the parent has been unable to remedy the circumstances that cause the child[ren] to be in an out-of-home placement and there is a substantial likelihood that the parent

> will not be capable of exercising proper and effective parental care and control in the near future.

The statute also requires that the termination of a parent's rights be in the child's best interests. *See* § 8-533(B); *see also Kent K.*, 210 Ariz. 279, ¶ 41, 110 P.3d at 1022. Tammy challenges that finding as well.

¶8 In its thorough, well-reasoned minute entry, the juvenile court reviewed the history of Tammy's lengthy involvement with ADES. The court described the sexual abuse and violence that was ongoing in this family, noting reports to Child Protective Services (CPS) in 1989. The court entered specific findings of fact to support its conclusion that ADES had established clearly and convincingly that terminating Tammy's rights pursuant to § 8-533(B)(8)(b) was justified. Noting that the standard of proof at a permanency hearing is by a preponderance of the evidence, the court incorporated extensive findings it had made in its order of June 13, 2007, after a hearing that related to all children but Haleigh, finding "the record currently before the Court supports incorporation of" many of those findings "based on clear and convincing evidence." "In light of the juvenile court's thorough findings of fact and sustainable conclusions of law with respect to both the statutory ground[] for severance and the children's best interests," we adopt the court's order. *Jesus M. v. Ariz. Dep't of Econ. Sec.*, 203 Ariz. 278, ¶ 16, 53 P.3d 203, 207-08 (App. 2002). Other than noting below portions of the court's order that directly relate to Tammy's more specific arguments, "we believe little would be gained by our further 'rehashing the trial court's

correct ruling' in our decision." *Id., quoting State v. Whipple,* 177 Ariz. 272, 274, 866 P.2d 1358, 1360 (App. 1993).

¶9 Tammy contends ADES failed to provide appropriate reunification services because it was never able to find placements for Shane and Codie. She asserts it was because of this failing by ADES that the children could not be returned to her, through no fault of her own. First, the argument that ADES rather than Tammy was responsible for the fact that her home remained dangerous because two of her own children were not removed illustrates what the juvenile court recognized as Tammy's "limited insight into her own behavior, much less the behavior of others." Tammy asks in her opening brief: "If [ADES,] with its vast resources[,] is unable to protect other children in an out of home placement from Codie and Shane[,] why should the mother be expected to protect her other children from Codie and Shane in her home?" What she fails to appreciate is that the children posing the danger are her children and it was her responsibility to recognize what was taking place in her own home and to act on it quickly and decisively. This she did not do. Additionally, when the sexual abuse by Shane and Codie was reported, Tammy insisted that Shane and Codie remain in the home. She did not believe they had done anything wrong. Moreover, the case manager testified that concerns about Tammy's parenting of these older, teen-aged boys had "[n]ever [risen] to the level that necessitated a removal." He added, "[T]hey are at this time not at risk for danger of imminent harm."

¶10 Second, as ADES points out, the fact that the perpetrators of the sexual abuse remained in the home was only one among a number of factors that made the home unsafe for the return of these children. On this precise point, the case manager testified that, "the issue of returning any of the victims to the home is not simply contingent upon the presence or lack thereof of the offenders. There's several other issues that would affect that." He added, "What I'm saying is, should it be the case that in the event we placed Cod[ie] and Shane in an out-of-home placement, I don't believe that the Department's position would have been to place the victims in her home at that time."

¶11 Consistent with that and other evidence, the gravamen of the juvenile court's ruling was that Tammy would be unable to adequately protect the children, whether it be from her other children or others. The court essentially found, based on a pattern of behavior that had persisted over time, that Tammy was likely to fail to recognize risks or even actual harm and thus to expose her children to additional risks, notwithstanding the plethora of services she had been provided over the years. As the court noted, "In the last six months, [Tammy] has engaged in intimate conversations with an unknown man on the internet, and has engaged in casual sexual contact (exhibiting 'hickeys' on her neck) with 'an old friend.'" The court added that Tammy "does not understand why such conduct in her circumstances would give cause for concern by her therapist, case managers and other professionals working on this case." The evidence supports the findings noted above, and we note that, at a dependency review hearing in October 2006, the court found ADES had

made reasonable efforts to achieve the case plan goal of reunification as to Tiffanie, Robert, Matthew, and Haileigh, a finding Tammy did not challenge.

¶12 Similarly, Tammy contends she did remedy the circumstances that had caused the children to remain in a court-ordered placement, at least those circumstances over which she had control. Again she argues the circumstances that caused the children to be out of the home at the time of the severance hearing were "primarily the history of inter-sibling sexual contact and the fact that the [perpetrating] children had not progressed far enough in therapy in order to be reunified and live in the same home." She asserts this circumstance was not one she was "personally responsible for remedying" and points to the progress she made over the last few years. Tammy also asserts that, particularly in light of that progress, the evidence fell short of establishing she would not be capable of exercising proper and effective parental care and control in the near future.

¶13 For the reasons we rejected her preceding argument, we reject this argument as well. We also note the juvenile court acknowledged the panoply of services Tammy had been provided and the progress Tammy had made at times. The court also acknowledged that Tammy loves her children. The court concluded that, nevertheless, ADES had sustained its burden. Among the findings of fact supporting the court's conclusion was that "[t]he primary concerns throughout this case have been [Tammy's] inability to effectively parent her children and her persistent history of poor judgment in becoming involved in relationships with men who[] are injurious to her to the detriment her children."

Additionally, the court noted, "Over at least the past three years, [Tammy] has failed to demonstrate that she could adequately protect, supervise and care for these seven children when they were placed together." The court noted in particular the testimony of Dr. Philip Balch, one of three psychologists who had evaluated Tammy over the years. Balch diagnosed Tammy as having a personality disorder, "not otherwise specified with the descriptor of dependent features." He explained, as the court found, that Tammy, as a person with such a disorder, displayed a habitually ingrained, maladaptive pattern of behavior. Questioning seriously whether she could make good decisions about her children, Balch concluded her prognosis was very poor.

¶14 We reject summarily Tammy's contention that ADES did not sustain its burden of establishing that the termination of her rights was in the children's best interests because "[t]here was no evidence . . . to indicate that there was an identified adoptive home for all the children." The evidence established the children were adoptable and their current placements were meeting their needs. That was sufficient. *See Mary Lou C. v. Ariz. Dep't of Econ. Sec.*, 207 Ariz. 43, ¶ 19, 83 P.3d 43, 50 (App. 2004). And, the juvenile court clearly considered these factors.

¶15 The remainder of Tammy's brief, including her challenge to the juvenile court's finding that termination of her parental rights was in the children's best interests, appears to be nothing more than a request that this court reweigh the evidence. She urges us to give greater weight to her progress, to the fact that she ended the relationships with the

children's fathers, and to the difficulty of having two sexually offending children in her own home. But this court does not weigh the evidence. *See Jesus M.*, 203 Ariz. 278, ¶ 12, 53 P.3d at 207. That is the province of the juvenile court. *See id*. The juvenile court was well aware of all these factors. The court also expressly acknowledged that Tammy's problems were "exacerbated by the fact that two of the children have severely victimized three others." And, to the extent there were conflicts in the evidence, it was for the juvenile court to resolve them. *See Lashonda M. v. Ariz. Dep't of Econ. Sec.*, 210 Ariz. 77, ¶ 16, 107 P.3d 923, 928 (App. 2005).

¶16 Based on the record before us, the juvenile court did not abuse its discretion by granting ADES's motion to terminate Tammy's rights to Tiffanie, Robert, Matthew, and Haileigh. The juvenile court's November 28, 2007 order is therefore affirmed.

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PHILIP G. ESPINOSA, Judge

CONCURRING:

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PETER J. ECKERSTROM, Presiding Judge

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GARYE L. VÁSQUEZ, Judge